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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 632

OLIVER W. TOLL, *Petitioner*

v.

JOHN W. GWYNNE, ET AL., *Respondents*

REPLY TO RESPONDENT'S ANSWER TO PETITION FOR WRIT OF CERTIORARI

Point I (*Illegality of regulations*): Other employees with lesser retention standing were retained in positions identical with petitioner's except lower in salary, while petitioner's request for salary demotion was denied (Petition p. 6; R. 31-34; 122-123; 125-126). Respondents say the two grades were placed in different "competitive levels". But a "level" is a device of the regulations unknown to the statute. It has a proper function (Pet. p. 31, par. 1); but it is not to frustrate the statute (Pet. p. 32, par. 4, *et seq.*). The question here is whether *under the statute* petitioner was a "competing employee" for the lower salaried positions. That depends, not on the mechanics of the regulations, but on the meaning of "competing" as used in the statute.

Elder v. *Brannan*, 341 US 277, at 283, pointed out that the regulations had not then defined the term "competing employees", and held that, as used in the first proviso of §12, "competing employees" did not mutually embrace employees of different tenure. Here petitioner and the incumbents of the lower salaried positions are of identical tenure. Moreover, *since Elder* v. *Brannan the regulations have defined "competing employees", regulations §20.2(c)*, by a definition which designates petitioner as a competing employee for the lower salaried positions. This provision, repeatedly cited in the Petition, pp. 7, 13 (quoted), 17, 19, 27 (quoted), 28, 29, 30, 31, 32, 33, 6a, 7a, 8a, 21a (quoted), respondents ignore. *From their own definition of "competing employees",—the issue under Point I—respondents resolutely avert their eyes.*

Point II (*due process*): At the time of petitioner's Civil Service appeal, the *vertical* size of a "level *was* a factual issue (§20.2(g); Pet. 22a, 33a). Respondents say that courts will not review administrative factual decisions. That is the very reason why the denial of a fair hearing in the administrative appeal violated petitioner's Constitutional right to due process.

Point III (*bogus reduction in force*): Contrary to the implication in the Answer brief (pp. 12-14), on this point respondents did *not* submit affidavits (cf. Petition, pp. 10-11; R. 46-47).

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